

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT M. McCAFFERY,)
)
) Civil Action No. 05-40146-RWZ
Pro se Petitioner,)
)
)
v.)
)
DAVID L. WINN,)
)
Respondent.)

RESPONDENT'S MOTION TO DISMISS

The Respondent David L. Winn, Warden, Federal Medical Center Devens,
through his undersigned counsel, hereby moves to dismiss the Petition for Writ of
Habeas Corpus pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter
jurisdiction, and pursuant to Rule 12(b)(6) for failure to state a claim upon which relief

can be granted. The grounds for this motion are set forth in the accompanying memorandum of law.

Respectfully submitted,

MICHAEL J. SULLIVAN
United States Attorney

By: /s/ George B. Henderson, II
George B. Henderson, II
Assistant U.S. Attorney
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3272

Dated: September 26, 2005

CERTIFICATION

The undersigned counsel states that he has not conferred with the pro se petitioner because LR 7.1(a)(2) requires "counsel" to confer and therefore does not apply when a party proceeds pro se. To the extent LR 7.1(a)(2) applies, it is requested compliance be excused here.

/s/ George B. Henderson, II
George B. Henderson, II

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the pro se Petitioner on September 26, 2005, by regular mail, postage prepaid, addressed to: Robert McCaffery, Reg. # 57977-066, FMC Devens, P.O. Box 880, Ayer, MA 01432.

/s/ George B. Henderson, II
George B. Henderson, II
Assistant U.S. Attorney